

**Deposit Telephone Company, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1125, Petitioner.** Case 3-RC-10559

July 27, 1999

**DECISION ON REVIEW AND DIRECTION OF ELECTION**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

On June 26, 1997, the Acting Regional Director for Region 3 of the National Labor Relations Board issued a Decision and Direction of Election in the above-captioned proceeding. The Acting Regional Director, relying on *Red Hook Telephone*, 168 NLRB 260 (1967), and *Fidelity Telephone*, 221 NLRB 1335 (1976), found the petitioned-for unit of Customer Service Technicians (CSTs) and maintenance employee to be inappropriate. The Acting Regional Director concluded that "in light of the small size of the Employer's complement of employees, the small geographic area involved, and the high degree of functional integration of work and employee contact," the smallest appropriate unit is a wall-to-wall unit of all employees, including the additional categories of Customer Service Representative (CSRs), the assistant-data processing, and the cashier. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely request for review of the Acting Regional Director's Decision.

By Order dated September 22, 1997, the Board granted review with respect to the unit issue.<sup>1</sup> We have carefully considered the entire record and the Employer's brief on review. Contrary to the Acting Regional Director, for the reasons set forth below, we find the petitioned-for CST/maintenance employee unit to be appropriate. Therefore, we reverse the Acting Regional Director's Decision, and shall direct an election among the petitioned-for unit of CSTs and maintenance employee, *excluding* the CSRs, the assistant-data processing, and the cashier.

**Facts**

The Employer provides local and long distance telephone and related communications services to 7000 customers over a service area of approximately 400 square miles. The Deposit facility is overseen by General Manager Peter Feehan, to whom five first line supervisors report. Feehan makes all hiring, discharge, and disciplinary decisions. The Employer's operations include the Deposit facility, which houses 33 employees, and 3 unmanned exchanges in nearby towns. The Employer divides its operations between its field operations, whose employees mostly travel outside the facility to install, maintain and repair poles and lines, and its in-house op-

erations, whose employees work entirely within the Deposit facility taking orders, processing customer requests, or performing billing and purchasing functions.

*The Proposed Unit:* The petitioned-for unit consists of the following employees: six CSTs-installation and repair (CSTs-I&R), one senior CST-construction, two CST-construction, one CST-cable, one CST-network, one CST-supply, one CST-switching, and one maintenance employee. All of these employees report to the installation and repair room located in the back of the Deposit facility. The unit sought includes all of the Employer's CSTs employed across its system.

Supervisor Beilby oversees the CSTs-I&R. CSTs-I&R perform 80 percent of their work in the field, installing and repairing telephone lines and switches and taking emergency repair calls. They earn between \$14.20 and \$15.03 per hour. The CSTs-construction, CST-network, CSTs-cable, CSTs-supply, and the maintenance employee are supervised by Supervisor Faulkner. The CSTs-construction, CST-network, and CST-cable spend a significant amount of their time in the field and regularly assist one another in performing work and filling in for absences. The CSTs-construction set and install poles, and maintain the poles and wires. The senior CST-construction earns \$15.03 per hour, and the other CST-construction earns \$14.20 per hour. The CST-network maintains, tests, and prepares electronic systems and installs and repairs the satellite TV (DBS) system. This technician earns \$16.70 per hour. The CST-cable earns \$16.70 per hour; his duties include maintaining the aerial and buried telephone cable and splicing new telephone cable. The CST-switching & data network earns \$18.73 per hour and spends the majority of his time at the Deposit facility repairing and maintaining the switching and network equipment.

The CST-supply is responsible for ordering supplies and purchasing materials. She also prepares new phones for customers and collects from pay phones. This employee spends a portion of her time (approximately one-half day per month and for short periods daily) filling in for CSRs. She earns \$11.69 per hour. The maintenance employee works full time in the summer, with a shorter workweek during the winter months. His duties include shoveling snow, maintaining the yard, trimming hedges, and washing vehicles. The maintenance employee also prepares new phones for customers, repairs phones, and collects coins from pay phones.<sup>2</sup>

*The Customer Service Representatives, the Assistant-Data Processing Employee, and the Cashier:* Supervisor Niles oversees the seven CSRs and one cashier. The CSRs work in the front offices and interact directly with customers, taking orders over the phone or in person. They also generate order schedules for the CSTs-I&R,

<sup>1</sup> The Board denied the Petitioner's request for review in all other respects.

<sup>2</sup> The record does not reflect the amount of the maintenance employee's salary.

and communicate to them customer orders and emergency calls on a daily basis. CSRs are paid \$12.02 to \$16.83 per hour, and senior CSRs are paid \$13.36 to \$18.70 per hour.<sup>3</sup> The cashier, who works Monday through Friday, 8:30 a.m. to 2 p.m., is stationed nearby in the CommSoft & PC room. The cashier opens and distributes mail, takes payments through the mail or directly from customers who come into the facility, and records payments into the computer billing system. In performing this latter function, the cashier often interacts with assistant-data processing and the CSRs. The cashier is paid \$11.69 per hour.

Supervisor Tiffany supervises the assistant-data processing. The assistant-data processing reports to the billing and MIS room in the front of the building and spends the majority of her time in this room working on a computer. Her duties include taking and verifying customer service orders, generating tickets for billing, inputting billing information into the computer, and inputting data from switching into the billing system. In compiling billing, payment, and service information, the assistant-data processing spends 5 hours per day interacting with the CSRs and the cashier, and once per week assists CSTs-I&R in connecting with the mainframe computer. She also communicates daily with the CST-switching in resolving technical problems with billing.

#### Analysis

Although the Board has considered systemwide units to be “optimal” in the utilities industry, this policy has not required multidepartmental units in all instances, particularly where no other labor organization seeks to represent a more comprehensive unit. *Tidewater Telephone Co.*, 181 NLRB 867 (1970). In *PECO Energy Co.*, 322 NLRB 1074 (1997), the Board explained that less than systemwide units may be appropriate where there is no opposing bargaining history, the proposed unit constitutes a well defined administrative segment of the company’s organization, and the unit can be established without undue disturbance to the company’s ability to perform its necessary functions. *Id.* at 1079, citing *Baltimore Gas & Electric*, 206 NLRB 199, 201 (1973).<sup>4</sup>

The Acting Regional Director found that the petitioned-for unit was inappropriate based on the small size of the complement of employees, the small geographic

area involved, and the degree of functional integration and employee contact. In finding that only a wall-to-wall unit of all employees was appropriate, the Acting Regional Director relied on *Red Hook Telephone Co.*, 168 NLRB 260 (1967), and *Fidelity Telephone Co.*, 221 NLRB 1335 (1976), where the Board rejected proposed units composed of less than the employers’ entire work force in operations with a small employee contingent, a high degree of functional integration between departments, and a limited geographic service area.

We find, contrary to the Acting Regional Director, that the petitioned-for unit is appropriate and that *Red Hook* and *Fidelity* were wrongly decided. Specifically, *Red Hook* and *Fidelity* are inconsistent with *PECO* to the extent that they are based, in part, on the size of the employee contingent and geographic service area. These are factors that the Board has specifically disregarded in other contexts. For instance, in *Dinah’s Hotel*, 295 NLRB 1100 (1989), the Board found the petitioned-for unit of seven front desk employees (out of a total employee contingent of 35) to be an appropriate unit because the petitioned-for unit employees shared a separate and distinct community of interest.<sup>5</sup> In finding the seven employee unit appropriate, the Board noted that the size of the employee contingent “is a relatively minor factor to be considered when applying the Board’s traditional community-of-interest test.” *Id.* at 1101. We are not persuaded that numbers alone should have any more relevance in the utility industry than in other industries. Similarly, while the size of a utility’s geographic service area could affect the community of interest shared by its employees, i.e., the amount of contact employees in distant parts of the service area have with one another, this factor does not necessarily have any relevance in determining the appropriateness of a less than systemwide unit.<sup>6</sup> We therefore find that the better approach is to consider the size of the employee contingent and geographic service area only to the extent that these factors relate to the community of interest shared by employees in the unit, and not as controlling factors in and of themselves. Accordingly, to the extent that *Red Hook*, *Fidelity*, and related cases place controlling weight on these facts, they are hereby overruled.<sup>7</sup>

<sup>3</sup> The record does not indicate whether there are currently any senior CSRs employed at the Deposit facility.

<sup>4</sup> Contrary to the dissent, the policy considerations articulated in *Baltimore Gas & Electric* are consistent with the result in the instant case. In that decision, the Board explained that while there existed strong policy considerations in favor of systemwide units, smaller than systemwide units are appropriate where the Board determines that they are a “feasible undertaking.” *Baltimore Gas & Electric*, *supra* at 201. See also *PECO Energy Co.*, *supra* at 1079–1080 (“the general rule in favor of systemwide units at public utilities has not operated as an absolute prohibition of smaller units”). We find that the facts of the instant case support a finding that a unit that is less than an overall unit is a “feasible undertaking.”

<sup>5</sup> While our dissenting colleagues may take issue with our comparison of the instant unit to similarly situated employees in other industries, as in *Dinah’s Hotel*, they proffer no justification for treating the size of the employee contingent as dispositive in public utility units as opposed to units involving employers in other industries.

<sup>6</sup> See, e.g., *National Telephone Co.*, 215 NLRB 176, 178 (1974) (finding a multifacility unit appropriate despite large distances between the facilities because of the high degree of interchange and contact between employees, noting that geography in itself “should or cannot be controlling”).

<sup>7</sup> In so doing, we do not hold that an employer’s geographic size and the size of the employee complement are no longer relevant, as the dissent asserts. Rather, as stated above, these factors are relevant only inasmuch as they bear upon the employees’ community of interest and are not dispositive factors on their own.

Analyzing the facts of this case in accordance with the principles set forth above, we conclude that the petitioned-for unit is appropriate. There is no evidence that another labor organization seeks to represent the Employer's employees in a more comprehensive unit or that there is contrary bargaining history, and it does not appear that the Employer's ability to perform its necessary functions would be hindered by the existence of a technicians' unit at its facility. Furthermore, the petitioned-for unit constitutes a well-defined administrative segment of the Employer's operations, as the Employer administratively distinguishes between its "field" employees and its other employees.<sup>8</sup> The petitioned-for employees also share overlapping supervision that is different from the CSRs, assistant-data processing, and the cashier. Additionally, the CSTs and maintenance employee are physically stationed together in the back portion of the Deposit facility, while the CSRs, assistant-data processing, and the cashier are stationed in the front of the facility.

The petitioned-for employees also differ significantly in their day-to-day duties from the employees the Employer seeks to include. The majority of the CSTs spend substantial portions of their time in the field, performing work that is technical in nature. In contrast, the CSRs, the assistant-data processing, and the cashier work exclusively at the Deposit facility performing customer service or clerical tasks. Although the CSTs occasionally interact with the CSRs, the assistant-data processing and the cashier, there is little temporary or permanent interchange between them. In contrast, there is a significant degree of contact and substitution among the different categories of CSTs. Given these administrative, physical, and functional differences, we find that the petitioned-for unit of CSTs and maintenance employee is an appropriate unit.<sup>9</sup> See *Concord Telephone Co.*, 248 NLRB 253 (1980) (finding a separate plant department unit appropriate based on, inter alia, separate supervision

and distinct duties, despite some interdepartmental employee contact).<sup>10</sup>

In sum, we find, in agreement with the Petitioner, that the unit sought is an appropriate unit for bargaining. Accordingly, the Acting Regional Director's decision is reversed with respect to the issue on review, and we shall direct an election in the following unit, which we find to be appropriate under Section 9(b) of the Act:

All full-time and regular part-time technicians and field employees employed by the Employer at its Deposit, New York facility, including customer service technicians—cable splicing/repair, customer service technicians—switching & data network, customer service technicians—installation and repair, customer service technicians—construction, maintenance, customer service technicians—supply, but excluding customer service representative, assistant-data processing, cashiers, senior accountants, account executives—business services, administrators—commercial markets, professional employees, guards, and supervisors as defined in the Act.

[Direction of Election omitted from publication.]

MEMBERS HURTGEN and BRAME, dissenting.

Contrary to our colleagues, we agree with the Acting Regional Director's finding that the requested unit of customer service technicians (CSTs) and maintenance employee is inappropriate in this case. We would adhere to the Board's well reasoned decisions in *Fidelity Telephone*, 221 NLRB 1335 (1976), and *Red Hook Telephone*, 168 NLRB 260 (1967), that find similar units to be inappropriate for the public utilities industry, and that the majority overrules to the extent that they are inconsistent with the result here.

The Employer is a small telephone company headquartered in Deposit, New York. The Company provides local service to about 7000 commercial and residential customers located in five small communities covering a total area of 400 square miles. All of the 33 persons employed by the Employer work out of its Deposit facility, and are subject to the same working conditions including sick leave, holidays, vacation policy, disciplinary rules, and insurance benefits.<sup>1</sup> The Employer's general manager, Stephen Feehan, has the authority to hire, discharge, and discipline these employees. There are five first line supervisors who direct the employee complement and who report directly to Feehan.

The Petitioner seeks to represent a unit of 14 employees that includes 13 CSTs and the lone maintenance em-

<sup>8</sup> The fact that the Employer does not have a formal "field" department does not require a systemwide unit. See *Tidewater Telephone Co.*, 181 NLRB at 867-868. Contrary to the dissent, the plant records clerks included in the unit in *Tidewater* shared a closer community of interest with the construction and installation employees than CSRs share with the unit employees in the instant case. Unlike the plant records clerks in *Tidewater*, the CSRs have separate supervision and interact only with a portion of the unit, the CSTs-I&R. Moreover, unlike the face-to-face interaction between the plant record clerks and the construction and installation employees in *Tidewater*, in the instant case, the CSRs' "interaction" with the CSTs-I&R consists of little more than occasional phone calls and e-mails that the technicians can later retrieve while they are in the field.

<sup>9</sup> The CST-supply has a greater degree of contact and interchange with the CSRs and assistant-data processing than the other CSTs, does not go into the field, and performs little technical work. Nevertheless, we find that this employee is appropriately placed in the technicians' unit. The CST-supply performs some repair work, is administratively part of the Employer's field operations, is stationed in the back of the facility with the rest of the CSTs, and shares common supervision with the technicians.

<sup>10</sup> The instant decision is consistent with the Board's treatment of technicians' units in other industries. See, e.g., *Harron Communications*, 308 NLRB 62 (1992) (finding a technicians' unit appropriate despite daily interaction between the technicians and customer service representatives).

<sup>1</sup> Ten of these persons are managers, supervisors, or otherwise not included in any unit involved herein.

ployee. The Employer, on the other hand, would also include in the unit seven customer service representatives (CSRs), the assistant data processor, and the cashier.

Two of the CSTs that the Petitioner seeks to represent, the customer service technicians-supply and the customer service technician-switching and data network, spend most of their workday at the Deposit facility. The duties of the CST for supply include ordering and purchasing materials, filling customer orders for telephones, and collecting moneys from pay telephones. She also substitutes for CSRs about two to three times per month for periods up to half a day. The CST for switching and data network is responsible for the repair, maintenance, and some engineering of that equipment. The other CSTs report for work at the Employer's facility and then spend the majority of their workday in the field. These CSTs' duties involve the installation of telephone poles, the maintenance of electronic system and telephone cable, and the installation and repair of customer telephone lines. The maintenance employee that the Petitioner would also include in the unit performs most of his work at the Deposit facility, and his duties involve shoveling snow, maintaining the yard, trimming hedges, washing vehicles, and collecting from pay phones.

The Employer, as, argues that its seven CSRs also belong in the bargaining unit. These employees work at the Deposit office and their primary job is to take customer orders, either by telephone or in person, and to schedule the required work so that the six CSTs for installation and repair can perform it. The CSRs have regular contact with these CSTs and other field personnel via cell phone and E-mail to facilitate the Employer's response to emergency situations and to customers' inquiries. The two other employees that the Employer would include, the assistant data processor and the cashier, also spend their workday at the Deposit facility. The assistant data processor is responsible for verifying completed service orders and trouble tickets and for entering them in the billing system. She is also responsible for extracting the data from switches that provide information regarding customer and long distance carrier billing. The cashier records all customer payments received and prepares reports for the CSRs concerning customers with delinquent bills. The CSTs and CSRs receive comparable compensation depending upon the exact duties of each position.<sup>2</sup>

As the Board stated in *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973):

[A] system wide unit is the optimal appropriate unit in the public utility industry and [there are] strong considerations of policy which underlie that view. That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by

a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the interrupted maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations. It has done so only when there was compelling evidence that collective bargaining in a unit less than systemwide in scope was a "feasible undertaking" and there was no bargaining history. [sic] As an examination of the cases in which narrower units have been found appropriate indicates, it was clear in each case that the boundaries of the requested unit conformed to a well-defined administrative segment of the utility company's organization and could be established without undue disturbance of the company's ability to perform its necessary functions. [Footnotes omitted.]

The Board followed these principles in *Red Hook*, above, when it found appropriate a systemwide unit of 43 employees divided between two facilities. That case, as here, involved a small telephone company that provided service to 13,000 customers in an area that encompassed 226 square miles.<sup>3</sup> The Board reached a similar result in *Fidelity Telephone Co.*, above, by rejecting a unit limited to 25 traffic department employees where the employer's entire work force consisted of only 58 employees, and where the employer served three small Missouri communities, with facilities in each. In both cases, the Board relied heavily on the relatively small size of the employee complement and the small geographical area involved as among the grounds for finding appropriate a system wide unit.

Likewise, this Employer also has a small work force of only 33 employees and serves a small geographical area. Further, all these employees work under the general supervision of General Manager Feehan and share common working conditions and fringe benefits. There is also a high degree of functional integration between the duties of the CSTs that the Petitioner seeks and the CSRs it would exclude in that both groups are responsible for ensuring that the Employer provides telephone service to the public. We also note that these employees are based at the same facility (making the facts here even stronger than in *Red Hook*, *Fidelity*, and *Colorado Interstate Gas*, where units with separate geographical identities were found inappropriate), and that there is regular contact between them when the CSRs prepare work orders for the CSTs to perform.<sup>4</sup>

<sup>3</sup> Subsequent to *Red Hook*, the Board in *Colorado Interstate Gas Co.*, 202 NLRB 847, 849 (1973), cited with approval in *Baltimore Gas & Electric*, rejected the petitioner's request for a unit of operation and maintenance employees in a separate geographical district of the employer, holding such districts "are not major administrative subdivision of the type which would justify fragmentation of the Employer's pipeline system."

<sup>4</sup> The majority's reliance on *Tidewater Telephone Co.*, 181 NLRB 867 (1970), is misplaced. Although the Board found a less than sys-

<sup>2</sup> The CSTs pay rates vary from \$11.69 to \$16.70 per hour. CSRs make between \$12.07 and \$18.70 an hour.

Thus, based on the size of the Employer's work force, the small geographical area it serves, and the integration of its operations, the evidence is overwhelming that a systemwide unit is appropriate. Yet, our colleagues have decided to fragment the Employer's operations to conform with the extent of the Petitioner's organizing campaign. Their result is totally contrary to the Board's general policy for unit determinations in this industry, and it offends the policy embodied in Section 9(c)(5) of the Act. Under its analysis here, the majority has concluded that the size of the employee complement and the geographical area the employer serves no longer are relevant factors in determining such appropriate units. Our colleagues treat this case as if the Employer was not a public utility and indeed rely on *Dinah's Hotel*, 295 NLRB 1100 (1989), involving an employer in the hospitality industry to support their finding that the requested unit is appropriate. This rationale would lead to the Board's

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temwide unit appropriate in that case, we note that the employees with duties similar to the CSRs here were included in a bargaining unit with those employees engaged in construction, installation, and maintenance.

finding that a separate unit of CSRs is also appropriate, if and when the petitioner or another labor organization seeks to represent them.

In short, by its decision here, the majority has emasculated the Board's policy against the fragmentation of bargaining units in the public utilities sector. Our colleagues' position, when universally applied to similar cases, will likely lead to the disruption in utility service to the general public that the Board has attempted to prevent by favoring systemwide units in this industry. We therefore conclude that *Red Hook* and *Fidelity Telephone Co.*, should be dispositive of the unit determination here, and not *Dinah's Hotel* as the majority finds. Accordingly, we would adopt the Acting Regional Director's decision that a systemwide unit is appropriate in this case.<sup>5</sup>

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<sup>5</sup> *PECO Energy Co.*, 322 NLRB 1074 (1997), that the majority relies on for a contrary result is clearly distinguishable from the present situation in that the employer there was a large utility and the two multiplant units found appropriate involved hundreds of employees working at either the employer's geographically distinct nuclear or nonnuclear generating stations.